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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,858	07/28/2003	Thomas R. Hetzel	249.301	3846

28785 7590 08/31/2005
JOHN R LEY, LCC
5299 DTC BLVD, SUITE 610
GREENWOOD VILLAGE, CO 80111

EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/628,858	Applicant(s) HETZEL ET AL.	
	Examiner Allan Kuhns	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 35-77 is/are pending in the application.
- 4a) Of the above claim(s) 57 and 60-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33, 47-56, 58, 59 and 66-77 is/are rejected.
- 7) ☒ Claim(s) 35-46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>110302, 122403 & 072204</u> | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election with traverse of Group I, claims 1-56, 58, 59 and 66-77 in the reply filed on June 27, 2005 is acknowledged. The traversal is on the ground(s) that the details of the apparatus claims 57 and 60-65 are sufficiently closely related to the method recited in the elected group of claims that all the claims should be examined simultaneously. This is not found persuasive because claims 57 and 60-65 require a search for structure while the elected method claims require a search primarily for manipulative steps.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 57 and 60-65 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 27, 2005.

3. Claim 34 is missing.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-25, 50-56, 66-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers, Jr. (4, 347, 213). Rogers, Jr. discloses or suggests the basic claimed process of capturing a negative impression of an anatomical portion of a person including (1) selecting an impression foam, and (2) forcing the anatomical portion into the impression foam to create the negative impression by collapsing or deforming

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(column 6, line 59) the impression foam. It would have been obvious to one of ordinary skill in the art to select an impression foam with a predetermined range of collapse or deformation distances in order that the amount of deformation is sufficient to take a desired impression but not so great as to permit pliable bag 18 from collapsing against itself. It is submitted that the beads of Rogers, Jr. have a substantially constant crush characteristic since presumably they are selected from the same lot.

It is submitted that the foam used by Rogers, Jr. possesses the deformation characteristics of claims 2-9 since the foam is designed to take impressions of human anatomy. Rogers, Jr. teaches or suggests the movements of a person, as in claims 10-20, and the examiner takes Official Notice that it is known to take impressions for preparing a cushion for a wheelchair, as in claims 21-25, 50-55 and 70-77. The examiner also takes Official Notice that it is known to place impressions in a container and to mail them to remote locations, such as for processing, as in claims 54-56 and 70-74. Rogers, Jr. teaches the use of beads which are fused or bonded, as in claims 66-68, at column 6, line 58.

6. Claims 26-33, 47-49, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers, Jr. as applied to claims 1-25, 50-56, 66-77 above, and further in view of Brubaker et al. (5,470,590). Also in a method of taking an impression of a portion of human anatomy (which is used to form a cushion), Brubaker et al. teach the aspect of using an initially created negative impression to subsequently form a positive impression. It would have been obvious to one of ordinary skill in the art to incorporate this aspect into the method of Rogers, Jr. in order to form a seat cushion

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which corresponds to the anatomy of a person. Rogers, Jr. teaches or suggests the bonding or fusing of plastic beads, as in claims 32, 33, 48 and 49. It is submitted that spaces, as in claims 33 and 49, inherently are produced from the practice of this process, for example due to imperfect bonding.

7. Claims 35 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Allan R. Kuhns
ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732
8-24-05